Cone-Heiden Corporation, Inc. and its agent Press Products, Inc. d/b/a C-H Printing *and* Graphic Communications International Union, Local 767-M, AFL–CIO. Cases 19–CA–20318, 19–CA–20321, and 19–CA–20495

December 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On May 30, 1991, Administrative Law Judge Joan Wieder issued the attached decision. The General Counsel filed exceptions and a supporting brief, and Respondent Press Products, Inc. (Press) filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, as modified below, and to adopt the recommended Order.

The judge dismissed the complaint allegations against Press Products, Inc., all of which are predicated on Press having committed unfair labor practices in its capacity as the alleged agent of Cone-Heiden Corporation, Inc. (Cone-Heiden).[1] We affirm the judge's finding that Press was not an agent of Cone-Heiden and, consequently, her dismissal of the complaint against Press. In doing so, we find that Press operated Cone-Heiden's business as the agent of the court-appointed temporary liquidating Receiver (the Receiver), rather than operating as Cone-Heiden's agent. The Receiver was, in turn, a fiduciary charged by the court with managing Cone-Heiden assets for the benefit of Cone-Heiden's creditors.[2]

The undisputed facts show that the Washington State Department of Revenues closed Cone-Heiden's doors on May 18, 1989,[3] and that on the same day Cone-Heiden filed for liquidation in a state superior court. Also on that day, the court appointed the Receiver and entered an order approving an Interim Operating Agreement. On May 19, Press began operation of the former Cone-Heiden business pursuant to the Interim Operating Agreement. Its operation of the business under that agreement lasted from May 19 to August 22, which is the period for which the General Counsel seeks to hold Press liable as Cone-Heiden's agent. During that period, Press operated the business with the same customers that Cone-Heiden had and used the latter's facility, equipment, and employees. Press, however, was not the owner of Cone-Heiden's assets at any time in this period; rather, all of Cone-Heiden's ownership interest in its assets was vested in the Receiver. In these circumstances, we find that Press was answerable for the operation of the former Cone-Heiden business wholly to Press' principal, the Receiver, for the benefit of the creditors of Cone-Heiden, not for the benefit of Cone-Heiden or itself. That being the case, the fact that the business during the period in question was operated with few, if any, changes from Cone-Heiden's operation shows only the manner in which Press chose to carry out its mandate to operate the business under the aegis of the Receiver. It does not establish that Press was the agent of Cone-Heiden, as alleged in the complaint.

We do not suggest that a court-supervised fiduciary can never have bargaining and contractual obligations. For example, although a debtor-in-possession is generally a court-supervised fiduciary,[4] that fiduciary, under Federal law, has contractual obligations under Section 1113 of the Bankruptcy Act and bargaining obligations under *Bildisco*.[5] However, the instant case involves a Receiver appointed as a fiduciary under state law. Hence, as noted above, this case does not rest on Federal bankruptcy principles. Indeed, the General Counsel bases his case solely on agency principles. It is clear that a fiduciary is not an agent. A fiduciary owes its loyalty to the beneficiaries or, in the context of the instant case, to the creditors.[6] By contrast, an agent owes its loyalty to its principal. Thus, the Receiver was not the agent of Cone-Heiden. Since the Receiver was not the agent of Cone-Heiden, it would appear to follow that Press, the agent of the Receiver, was not an agent of Cone-Heiden. This is made explicit in the Interim Operating Agreement which states that Press ''is not an agent'' of Cone-Heiden. In these circumstances, we conclude that the General Counsel has not established that either the Receiver or Press is the agent of Cone-Heiden.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Cone-Heiden Corporation, Inc., Seattle, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The complaint does not allege that Press was a successor to Cone-Heiden apparently because the Regional Director dismissed a charge containing a successorship allegation and the dismissal was upheld on appeal by the General Counsel.

[2] In light of our disposition of the case on this ground, we find it unnecessary to pass on the judge's discussion of the applicability of the Federal Bankruptcy Code to this proceeding.

[3] All dates hereafter are in 1989.

[4] ''A debtor-in-possession is a fiduciary holding the estate's assets and operating its business for the creditors and under the supervision of the court.'' *Collier Handbook for Trustees and Debtors in Possession* (1989), Para 20.05.

[5] *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 534 (1984).

[6] See *NLRB v. Amax Coal Co.*, 453 U.S. 322, 334 (1981).

sors, and assigns, shall take the action set forth in the Order.

Daniel R. Sanders, Esq., for the General Counsel.
Gary E. Lofland, Esq. (Lofland & Associates), of Yakima, Washington, for the Respondent.
Mark Heller, Esq. (Davis, Roberts, and Reid), of Seattle, Washington, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOAN WIEDER, Administrative Law Judge. This case was tried on January 21, 1991,[1] at Seattle, Washington. The charges, as amended, were timely filed[2] by Graphic Communications International Union, Local 767-M, AFL–CIO (the Union). On September 24, 1990, the Regional Director for Region 19 of the National Labor Relations Board issued a consolidated complaint and notice of hearing alleging Cone-Heiden Corporation, Inc. and its agent Press Products, Inc., d/b/a C-H Printing, Inc. (Respondent or the Company), violated Section 8(a)(5) and (1) of the National Labor Relations Act.

Respondent's timely filed answer to the complaint admits certain allegations, denies others, and denies any wrongdoing.

All parties were given full opportunity to appear and introduce evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Cone-Heiden Corporation, Inc. did not appear and present its position; there was no claim of lack of notice or opportunity to appear and participate in these proceedings raised by any party. Press Products, Inc., d/b/a C-H Printing, Inc. (Press Products, Inc.) was represented by counsel at this proceeding and filed a brief.

Issues

The consolidated complaint in Cases 19–CA–20318 and 19–CA–20321 allege Cone-Heiden, Inc. has refused to abide by the terms of three described collective-bargaining agreements since on or about December 16, 1988; including failing to make contractually obligated payments for pension, health and welfare trust funds, wages, payments for pension to employees, vacation pay, and an abrogation of the grievance/arbitration provisions of the contracts. Cone-Heiden, Inc. was dissolved by the State of Washington and the General Counsel submitted claims in the liquidation proceeding. Accordingly, General Counsel seeks only a notice as the remedy against Cone-Heiden, Inc. in this proceeding.

The consolidated complaint in Case 19–CA–20495 alleges Press Products, Inc. was an agent of Cone-Heiden, Inc. and acting within the scope of such agency implemented unilateral changes in terms and conditions of employment from May 19 to August 22, 1989. The consolidated complaint also alleges on or about May 19, 1989, Cone-Heiden, Inc., through Respondent Press Products, Inc., bypassed the Union and dealt directly with its employees in described units by negotiating terms and conditions of employment directly with employees.

Press Products, Inc. claims it is not an agent of Cone-Heiden, Inc. and assuming arguendo such agency is found, it is protected by the laws of the State of Washington; asserting the Bankruptcy Code is not applicable. Press Products, Inc. argues the state proceeding was for liquidation and dissolution of Cone-Heiden, Inc., not a reorganization directed to keep the organization operating. Press Products, Inc. also disclaims being a successor, averring different ownership and management, different business locations, and employment of only one-half of Cone-Heiden, Inc.'s employees to conduct the interim operations to preserve the assets and facilitate liquidation. Respondent Press Products, Inc. further argues the Interim Operating Agreement provided, with specificity, that its execution did not constitute the assumption of ''any executory contract.'' The Interim Operating Agreement was approved by the superior court ''in all respects.''

Based upon the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs filed by counsel for the General Counsel and C-H Printing, Inc., I make the following

FINDINGS OF FACT

I. JURISDICTION

I find Cone-Heiden Corporation, Inc. meets one of the Board's jurisdictional standards. It is undisputed Cone-Heiden engaged in printing and direct mail. Eugene Arfin, the chief executive officer and principal stockholder of Cone-Heiden in 1989, testified during the 1-year period ending May 1, 1989, the gross sales of goods and services of Cone-Heiden were valued in excess of $500,000. During the same time period, Cone-Heiden provided foods and services to customers who were located outside the State of Washington valued in excess of $50,000.

I further find, based on the unrefuted testimony of John Bachler, president of the Union, and Mark Hepburn, executive vice president of the Union, that the Union is a statutory labor organization.[3] The Union, among other purposes, on behalf of its members, negotiates contracts and handles grievances.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent Cone-Heiden, Inc. had collective-bargaining agreements with the Union for three separate classes of employees. It is alleged, and I find, that at all times here pertinent, the following employees of both Respondents constitute separate appropriate units for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> (1) All mailing department machine operators, machine operator apprentices and general workers em-

[1] All dates are in 1990 unless otherwise indicated.

[2] The charge in Case 19–CA–20318 was filed May 16, 1989; the charge in Case 19–CA–20321 was filed on May 17, 1989; the charge in Case 19–CA–20495 was filed on August 11, 1990, and amended on September 14, 1990.

[3] Sec. 2(5) of the Act provides:

> The term ''labor organization'' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

ployed by Cone-Heiden, Inc. at its Seattle facility, excluding all other employees, supervisors and guards as defined in the Act. The effective dates for the collective-bargaining agreement for this unit were May 1, 1988 to April 30, 1990.

(2) All preparatory department employees, duplicator operators and press employees employed by Cone-Heiden, Inc. at its Seattle facility, excluding all other employees, supervisors and guards as defined in the Act. The collective-bargaining agreement covering these employees was effective from May 1, 1987 to April 30, 1990.

(3) All bookbinders, general bindery workers, and warehouse employees employed by Cone-Heiden, Inc. at its Seattle facility, excluding all other employees, supervisors and guards as defined in the Act. The collective-bargaining agreement covering these employees was effective from May 1, 1987 to April 30, 1990.

Eugene Arfin, Cone-Heiden, Inc.'s chief executive officer and sole stockholder, experienced financial difficulties during the 6-month period preceding May 19, 1989. On or about November 28, 1988, the Department of Revenue of the State of Washington issued a warrant against Cone-Heiden, Inc., for unpaid taxes, increases, and/or penalties.

Cone-Heiden, Inc.'s financial difficulties resulted in its failure to make many payments, including wages. As of May 18, 1989, Cone-Heiden, Inc. owed some employees wages based on their inability to cash paychecks because Cone-Heiden, Inc. had insufficient funds in its bank account. Arfin was not sure of the nature or extent of the failure of Cone-Heiden, Inc. to make payments to trust funds for employee insurance, health benefits, and other benefit funds, as required by the collective-bargaining agreements, but admitted it missed payments.

The parties stipulated to almost all the facts as follows:

1. Press Products, Inc. is a Washington corporation whose offices and principal place of business was located at 1109 N. 35th Street, Seattle, Washington. It was and is currently engaged in the commercial printing and direct mail business.

2. Cone-Heiden, Inc. was a Washington corporation whose offices and principal place of business was located at 3411 Thorndyke W., Seattle, Washington. It was engaged in the commercial printing and direct mail business.

3. Cone-Heiden, Inc. had a collective-bargaining relationship with Local 767-M. The most recent collective-bargaining agreements are designated as Exhibits 1–3.[4]

4. On May 18, 1989, the Washington Department of Revenue issued an Order Revoking the Certification of Registration of Cone-Heiden, Inc. as the result of Cone-Heiden, Inc.'s failure to pay taxes. The employees of Cone-Heiden, Inc. were sent home and the doors padlocked by the Department of Revenue.

5. On May 18, 1989, Cone-Heiden, Inc. filed a petition by corporation to have liquidation continued under supervision of the court in Superior Court of King County, State of Washington. A motion to appoint a temporary liquidating receiver was filed May 18, 1989.

6. On May 18, 1989, a temporary liquidating receiver was appointed by the superior court.

7. On May 18, 1989, an order approving an Interim Operating Agreement and providing preliminary injunctive relief was entered by the superior court. The receiver approved and accepted the Interim Operating Agreement. No further order regarding the interim period of operation was entered by the superior court.

8. On May 19, 1989, Press Products, Inc. began operations of the former Cone-Heiden, Inc. facility pursuant to the Interim Operating Agreement approved by the Superior Court of the State of Washington. Those operations continued until August 22, 1989. The period between May 19 and August 22, 1989, shall be referred to as the period of interim operation.

9. On May 19, 1989, former production employees of Cone-Heiden, Inc. met with Press Product's president, Al DeAtley, and manager, Ken Peterson. Eugene Arfin, previous owner of Cone-Heiden, Inc., was hired by Press Products, Inc. as a sales representative and was present during the initial group meeting. Each was required to complete an application for employment and was informed of the terms and conditions of any employment available with Press Products, Inc. Representatives of Press Products, Inc. met with individual employees to discuss wage rates if employees were hired and accepted employment at Press Products, Inc. Not all former Cone-Heiden employees sought employment or were hired.

10. Press Products, Inc. did not notify Local 767-M of its interim operation and did not include a representative of the Union in any discussion with former Cone-Heiden employees.

11. Press Products, Inc. did not apply the terms and conditions of the labor agreements between Cone-Heiden, Inc. and Local 767-M, during the period of interim operation.

12. During the period of interim operation, Press Products, Inc:

A. Entered into an agreement with and made weekly rental payments to the 17th Avenue West Building Co. Ownership Association, the owner of the building located at 3441 Thorndyke W.

B. Made lease payments for equipment used in its operation directly to the owners of that equipment.

C. Purchased 1st Interstate Bank's lien for inventory and work in progress.

13. On July 21, 1989, the temporary liquidating receiver filed a motion for authority to sell business assets of Cone-Heiden Corporation. Objections were filed by six parties, including Local 767-M, after hearing before the superior court on August 21, 1989, an order approving and authorizing receiver sale was entered.

14. The offer to purchase by Press Products, Inc. dated July 19, 1989, was accepted and the court appointed receiver sold the assets of the Cone-Heiden, Inc. business to Press Products, Inc.

15. Creditors of Cone-Heiden, Inc. made claims to the receiver for obligations owing by Cone-Heiden. Graphic Communications International Union, Local 767-M and the National Labor Relations Board submitted claims.

16. On November 19, 1990, a Decree of Dissolution and Final Decree was entered by the superior court dissolving Cone-Heiden's corporate existence.

[4] The most recent collective-bargaining agreements were in effect from May 1, 1987, to April 30, 1990.

17. On May 24, 1989 Graphic Communication International Union, Local 767-M filed charges with Region 19 of the NLRB in Case 19–CA–20332. That charge was withdrawn by the Union on June 22, 1989.

18. On November 17, 1989, the Union filed a charge in Case 19–CA–20634 against Press Products, Inc. with the Regional Director of Region 19 of the NLRB. After investigation, the Regional Director refused to issue a complaint of January 19, 1990. The Union appealed the refusal to issue a complaint, and the office of the General Counsel denied said appeal.

19. RCW 23A.28.010 et seq. is the statute which provides for corporate dissolution and liquidation, and the parties required the administrative law judge to take judicial notice of that statute.

When Press Products, Inc. commenced operating Cone-Heiden, Inc., it did so as C-H Printing, Inc. and hired Arfin and his daughter. Cone-Heiden, Inc. had work in progress at the time and Arfin opined its equipment and business value would have diminished if operations had not been continued by Press Products, Inc. Arfin's position with Press Products, Inc. kept changing, initially he was responsible for sales and then became ''kind of a de facto general manager and then I was plant manager and then I—whenever there was a problem I was asked to step in.'' Arfin's daughter, Emily Arfin, was employed by C-H Printing, Inc. as the comptroller and plant manager from May 19 to about July 19, 1989. Emily Arfin had been the general manager of Cone-Heiden, Inc. Cone-Heiden, Inc. was in the business of printing and direct mail as was Press Products, Inc., d/b/a C-H Printing, Inc.; there was no change in business from May 18, 1989, until late summer 1989 when Press Products, Inc. transferred its equipment to Cone-Heiden, Inc.'s facilities. Until the equipment transfer, Cone-Heiden, Inc. and C-H Printing, Inc. used the same equipment and production processes. According to Arfin, it was ''the same company . . . [s]ame customers, same systems, same equipment, same employees.''

On April 14, 1989, John Bachler, the union president, forwarded two grievances to Arfin. One employee, Bruce Gelston, filed a grievance for payment of 117 hours accrued vacation time, social security overpayments, and wages from March 27 through April 13, 1989. The second grievance, dated April 13, 1989, was filed by Retta Williams and was also for unpaid wages, vacation pay, and social security overpayment. These grievances also involved bounced checks. In May 1989, before Cone-Heiden, Inc. was shutdown, John Bachler, the union president, went to the facility to discuss these grievances with Emily Arfin. Also sent to Arfin was a grievance involving the cancellation of the mailer classification and shipping and receiving classification medical-dental insurance because of nonpayment of premiums. Two other grievances were forwarded by Bachler to Ms. Arfin by letter dated April 14, 1989.

Another grievance was filed by Andy Jennings for 52 hours' vacation time plus 7 hours' wages. Hepburn forwarded this grievance to Arfin by letter dated May 1, 1989. Hepburn's letter also declared:

> Also you promised to write a letter in response to the grievances filed by Retta Williams and Bruce Gelston regarding monies owed them at termination. To date neither person has had any payment made either according to the ''agreed upon'' schedule or otherwise.
>
> Will you please let us and these three (3) people know when their claims can be satisfied.

Hepburn never received a response to his letters, thus did not meet with any representative of Cone-Heiden, Inc., and the grievances were never resolved.

Hepburn further testified he attended an employee meeting at Cone-Heiden, Inc. in late April or early May 1989. The meeting was held in the employee lunchroom which is on the Company's premises. The meeting was attended by most of Cone-Heiden, Inc.'s employees as well as Emily and Eugene Arfin. Hepburn was not invited to the meeting but was advised by a unit member that the meeting had been called. When Hepburn arrived at the meeting site, Eugene Arfin told him his presence was not welcome and he could not attend the meeting. After some discussion, Arfin permitted Hepburn to attend the meeting only as an observer.

According to Hepburn:

> And the general content of the meeting was to relate to the employees the situation at that time as far as the financial status of the company and what the immediate plans were.
>
> And one of the parts of the meeting was the employees were going to have their medical insurance all changed. There was a different plan for the office employees than there was for the bargaining unit employees. They were going to discuss talking [sic] about moving them into the office employee's plans, possibly self-insuring or just, because they couldn't afford it, not pay any more premiums into any plan at all.

These changes in terms and conditions of employment were never discussed with the Union. Hepburn's attendance at the meeting could not be construed as constituting bargaining for he was permitted to attend only as an observer. After the meeting, Hepburn followed the Arfins into a corridor and asked them about two of the grievances the Union had filed. The Arfins responded ''something like you'll have to get in line with everybody else that we owe money to because it's a matter for the civil courts to decide.'' This discussion occurred before the Company was shut down and Press Products, Inc. commenced operations. Respondents did not dispute the testimony of Bachler and Hepburn.

B. *Analysis and Conclusions*

Section 8(a)(5) and (1) and Section 8(d) of the Act prohibit an employer that is a party to an existing collective-bargaining agreement from modifying the terms and conditions of employment found in that agreement without obtaining the consent of the Union. *Rapid Fur Dressing*, 278 NLRB 905 (1986); *Nestle Co*., 251 NLRB 1023 (1980); *Pere Marquette Park Lodge*, 237 NLRB 855, 861 (1978).

As the Board held in *SAC Construction Co*., 235 NLRB 1211, 1218 (1978):[5]

> The law is well established that unilateral changes of wages, hours and terms and conditions of employment by an employer obligated to bargain with the represent-

[5] Enfd. denied 603 F.2d 1155 (5th Cir. 1979), on other grounds.

> atives of its employees in an appropriate unit violates Section 8(a)(5) of the Act. *Master Slack and/or Master Trousers, Corp. et al*., 230 NLRB 1054 (1977). Benefits such as payments into health, welfare, and pension funds on behalf of employees, constitute an aspect of their wages and a term and condition of employment which, along with wage rates, survive the expiration of a collective bargaining agreement and cannot be altered without bargaining. *Harold W. Hinson, d/b/a Hen House Market No. 3*, 175 NLRB 596 (1969), enfd. 428 F.2d 133 (8th Cir. 1970).

It is undisputed Respondent Cone-Heiden, Inc. failed to process grievances, make wage payments, and make required fringe benefit payments prior to May 18, 1989. There is no claim there was a bargaining impasse with the Union or that the Union lost its majority status or waived the Respondent's obligation to bargain with it regarding terms and conditions of employment. Accordingly, I find Respondent Cone-Heiden, Inc. has violated Section 8(a)(5) and (1) and Section 8(d) by failing to abide by provisions of a collective-bargaining agreement prior to May 18, 1989.

The allegation Press Products, Inc. engaged in direct dealing with employees was not substantiated on the record, rather, the evidence clearly demonstrates Cone-Heiden, Inc. engaged in direct dealing with its employees before Press Products, Inc. was appointed temporary operator of the business on May 19, 1989. There is no claim by the General Counsel that the complaint should be amended to aver Cone-Heiden, Inc. engaged in direct dealing in violation of the Act prior to May 19, 1989. The allegation of direct dealing has not been shown to be closely related to the assertion Cone-Heiden, Inc. violated the Act prior to May 19, 1989, or that it should have been on notice the direct dealing allegation was based on conduct of Cone-Heiden, Inc. prior to appointment of Press Products, Inc. as interim operator. Also, Respondent Cone-Heiden, Inc., may have chosen to be represented during the trial in this matter if it had known it was alleged to have engaged in direct dealing in violation of Section 8(a)(5) and (1) of the Act. I therefore recommend the dismissal of this allegation.[6]

Respondent Cone-Heiden's claims that it is financially unable to make the required payments does not constitute an adequate defense to an allegation that an employer has violated Section 8(a)(5) and (1) and Section 8(d) of the Act by failing to abide by a provision of a collective-bargaining agreement. *General Split Corp*., 284 NLRB 418 (1987).[7] In *Nick Robilotto, Inc*., 292 NLRB 1279 (1989), the Board found:

> The Respondent's declaration that it is financially unable to make the required payments does not constitute an adequate defense to an allegation that an employer has violated Section 8(a)(5) and (1) and Section 8(d) of the Act by failing to abide by a provision of a collective-bargaining agreement.

Respondent Cone-Heiden's defense of economic distress ''is not cognizable as a defense to the unilateral repudiation of monetary provisions in the collective-bargaining agreement'' or the general obligation to bargain. *Triangle Appliance*, 265 NLRB 1473 (1982). See also *Raymond Prats Sheet Metal Co*., 285 NLRB 194 (1987); *International Distribution Centers*, 281 NLRB 742 (1986); *Hiysota Fuel Co*., 280 NLRB 763 (1986); *Excelsior Pet Products*, 276 NLRB 759 (1985).

As held in *Nathan Yorke, Trustee in Bankruptcy*, 259 NLRB 819, 826 (1981):

> When an employer decides to terminate or close its entire operation it must, once that decision is made, afford the employees' collective-bargaining representative the opportunity to bargain over the impact and effect of that decision on unit employees. *Burgmeyer Bros., Inc*., 254 NLRB 1027 (1981); *Summit Tooling Co*., 195 NLRB 479 (1972), enfd. 474 F.2d 1352 (7th Cir. 1973). This duty is not relieved by the employer's bankruptcy, and any consequent belief by it that it would be financially unable to meet any of the union's bargaining demands. *Burgmeyer*, supra. A trustee-in-bankruptcy is the alter ego of the bankrupt employer and, like that employer, is under a duty to comply with the National Labor Relations Act, including the requirement to engage in collective bargaining. *Jersey Juniors, Inc*., 230 NLRB 329, 331–332 (1977); *Burgmeyer*, supra.

The next issue is what, if any, culpability does Cone-Heiden, Inc. and Press Products, Inc. d/b/a C-H Printing, Inc. have for any unilateral changes to the terms and conditions of employment after May 18, 1989. The applicable law in liquidation proceedings in Bankruptcy Court was summarized by Administrative Law Judge William L. Schmidt in *San Bernardino Dental Group*, 302 NLRB 135, 136 (1991), as follows:

> Section 8(a)(5) of the Act provides in substance that it is an unfair labor practice for an ''employer'' to refuse to bargain collectively with a certified or recognized employee representative. Section 8(d) of the Act defined the term ''bargain collectively'' to include the

[6] If it were determined the allegation of direct dealing is closely related to the other allegations concerning Cone-Heiden, Inc., I would conclude the Arfins' statements to its employees that Cone-Heiden, Inc. will unilaterally modify and perhaps even eliminate some terms and conditions of their employment, without negotiating with the Union, constituted unlawful direct dealing. It is undisputed Cone-Heiden, Inc. never proposed any alteration in the benefits afforded its employees and did not notify any union official of these proposals prior to announcing the changes at the meeting. When a union official learned of the changes, Respondent Cone-Heiden, Inc. refused to negotiate with its employees' collective-bargaining representative. *Ross Crane Rental Corp*., 267 NLRB 415, 416 (1983); *Fabric Warehouse*, 294 NLRB 189 (1989). If this violation had been alleged in the complaint, I would have found Respondent Cone-Heiden, Inc. violated Sec. 8(a)(5) and (1) of the Act by dealing directly with its represented employees.

[7] See also *Flood City Brass & Pump Co*., 296 NLRB No. 28 (Aug. 22, 1989) (not reported in Board volumes) wherein the Board found:

> Neither a claim of economic necessity nor a lack of subjective bad-faith intent, even if proven, constitutes an adequate defense to an allegation that an employer has violated Section 8(a)(5) of the Act by failing to abide by provisions of a collective-bargaining agreement. *International Distribution Centers*, 281 NLRB 742, 743 (1986); *Westinghouse Electric Corp*., 278 NLRB 424, 432 (1986).

> mutual obligation of an employer and a union to ''meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment.''
>
> Section 2(1) of the Act defines the term ''person'' to include bankruptcy trustees and Section 2(2) of the Act defines the term employer to include ''any person'' acting as an agent for an employer.
>
> While a successor employer was found to be an alter ego ''the courts have had little difficulty holding the . . . successor is in reality the same employer and is subject to all the legal and contractual obligations of the predecessor.'' *Howard Johnson v. Detroit Joint Board*, 417 U. S. 249, 259 fn 5 (1974). This includes the duty to bargain with the recognized employee representative pursuant to Section 8(a)(5). See *O'Neill Ltd*., 288 NLRB 1354 (1988). The conclusion that one party is the alter ego of another for purposes of determining duties and obligations under the Act is a fact question resolved by the attendant circumstances. *Crawford Door Sales Co*., 226 NLRB 1144 (1976).
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> In certain cases, the Board has treated bankruptcy trustees, foreclosure trustees, debtor-in-possession as alter egos of the debtors involved. *Karsh's Bakery*, 273 NLRB 1131 (1984); *Nathan Yorke, Trustee, supra*, 259 NLRB 819 (1981); *Jersey Juniors*, 230 NLRB 329 (1977); *Cagle's, Inc*., 218 NLRB 603 (1975); and *Marion Simcox, Trustee*, 178 NLRB 516 (1969). These cases involved debtor reorganization situations.

In the *San Bernardino* case id., because the court failed to authorize the trustee to operate the business and since the trustee was not shown to be an alter ego, it was concluded General Counsel failed to prove the trustee was an employer or violated the Act. In affirming the administrative law judges decision the Board, supra at fn. 1, noted:

> In agreeing with the judge that William J. Simon, as the chapter 7 trustee in bankruptcy, did not violate Section 8(a)(5) of the Act, we emphasize the fact that the bankruptcy court did not authorize Simon to operate the San Bernardino Dental Group. In these circumstances, a chapter 7 trustee who is given the authority by the bankruptcy court to operate a business has an obligation to bargain with a union that is the collective-bargaining representative of employees at that business.

Unlike the *San Bernardino* case, the petition for voluntary dissolution filed on behalf of Cone-Heiden, Inc. requested the business continue under the supervision of the state court to maximize the sale value of the company. The court granted this request and appointed Press Products, Inc. to operate the business of Cone-Heiden, Inc. On May 18, 1989, the Superior Court of Washington for King County appointed Donald Ginsberg temporary liquidating receiver for Cone-Heiden, Inc. and he was directed to take possession of all the assets of the corporation subject to the terms and provisions of an Interim Operating Agreement. In approving the Interim Operating Agreement, the court found:

> [I]t appearing that it is in the best interest of the Petitioner [Cone-Heiden, Inc.] and its creditors and in order to avoid irreparable harm to the Petitioner and its creditors and to facilitate an orderly disposition and liquidation of the Petitioner's assets under the supervision of the Court in connection with the Petitioner's voluntary corporate dissolution . . . that approval and immediate implementation of the Petitioner's Interim Operating Agreement . . . and the issuance of a preliminary injunctive relief enjoining any creditor of the Petitioner or other persons from commencing or continuing any action to enforce their claims or rights as against the Petitioner or its property is appropriate and proper and in the best interest of the Petitioner and its creditors.

The Interim Operating Agreement (Agreement) reflects the interim operator, Press Products, Inc., and Cone-Heiden, Inc. had entered into an ''Asset Purchase'' agreement under which Press Products, Inc. agreed to purchase certain assets from Cone-Heiden, Inc. and pending the close of the Asset Purchase Agreement, to have Press Products, Inc. operate Cone-Heiden, Inc. The receiver appointed and engaged Press Products, Inc. to be the interim operator of the business ''as an independent contractor and not as an agent of Cone-Heiden except as otherwise specifically provided herein.''

The Agreement also gave Press Products, Inc. as the operator, authority to supervise, direct and control the business of Cone-Heiden, Inc. The Agreement allowed Cone-Heiden, Inc. to enter the premises and inspect the business with reasonable frequency during regular business hours. The Agreement could be terminated by either mutual consent or by Press Products, Inc. if the Agreement was not approved by the appropriate court, or Press Products, Inc. terminates the Asset Purchase Agreement, or Press Products, Inc. gave Cone-Heiden, Inc. 10 days' notice.

The last article of the Agreement provides:

> VI.8 *No Assumption*. Nothing contained herein or in any order of the court approving this Agreement shall be deemed to constitute the assumption by Cone-Heiden of any executory contract or unexpired lease including, without limitation, any lease or any equipment agreement which constitutes a true lease. Nothing in this Agreement is intended to be, or shall be construed as, a representation, warranty or acknowledgement that any agreement to which Cone-Heiden is a party that has been denominated as a ''lease'' is in fact a lease, rather than a disguised security agreement, and nothing contained herein is intended to or shall in any manner limit the ability of Cone-Heiden to argue that a contract that is denominated as a ''lease'' in fact constitutes a security agreement, or, without limiting the foregoing, to contend that a ''lease'' really constitutes a security agreement that provides for an unperfected security interest that is void or may be voidable by Cone-Heiden.

I find the operating entity C-H Printing, Inc. is an employer, as defined by Section 2(1) and (2) of the Act. As an employer, Press Products, Inc. operating as C-H Printing, Inc., has an obligation to recognize and bargain with the statutory bargaining agent of its employees which is independent of the rejection or renegotiation of collective-bargaining agreements within the ''framework of a bankruptcy petition.'' *Karsh's Bakery*, 273 NLRB 1131.

The Agreement, as approved by the court, did not specifically authorize Press Products, Inc. or its operating entity C-

H Printing, Inc. to terminate any executory contracts; it did clearly, however, approve Press Products, Inc.'s appointment with the imprimatur of not assuming any executory contracts.

On July 19, 1989, Ginsberg the temporary liquidating receiver of Cone-Heiden, Inc., received an offer to purchase from C-H Printing, Inc. The offer was subject to the court ordering:

> (c) that except as to secured creditors/lessors holding perfected consensual security interests or valid liens in the business assets which are the subject hereof, Purchaser shall not be responsible, in any way, directly or indirectly, for the obligations or debts of the Corporation [Cone-Heiden, Inc.], including, without limiting the generality of the foregoing, any such obligations related to the Corporation's labor agreements.

On July 24, 1989, the receiver filed a motion for authority to sell specified business assets of Cone-Heiden, Inc. to C-H Printing, Inc. pursuant to the terms of the offer of purchase. The Union had filed objections to the receiver's motion on or about August 11, 1989. The Union claimed Cone-Heiden, Inc. owed its employees more than $100,000 and unlawfully repudiated its collective-bargaining agreements; despite C-H Printing, Inc. assuming ''full responsibility for the operation, management and maintenance of [Cone-Heiden's] business and for the payment of all expenses . . . including . . . employee wages, C-H Printing, Inc. failed to pay the contractually mandated wages and other benefits.'' The Union noted the Offer to Purchase all of the assets for $40,000 also included the right to use the name Cone-Heiden Corporation and Morse Press,[8] as trade names and to continue doing business with Cone-Heiden, Inc.'s existing customers.

The Union also argues RCW 23A.28.160[9] requires voluntary dissolution claims in the Washington State superior courts be ''governed by the same rules as are applicable in bankruptcy proceedings under the national bankruptcy act as in force at the time of the dissolution proceedings.'' Washington State Courts have applied the Federal Bankruptcy Code in state dissolution proceedings. *Bennett-Ireland v. American Aluminum Products Co*., 59 Wn. 2d 670, 674 (1964). Citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984), the Union averred the receiver has not justified rejection of the collective-bargaining agreements. While the Union recognizes Cone-Heiden, Inc. is not seeking a Chapter 11 reorganization, it argued the continuation of Cone-Heiden, Inc.'s business by C-H Printing, Inc. should be treated as only a technical difference which is insufficient to abrogate the applicability of *Bildisco*.

On August 22, 1989, The King County Superior Court entered its order authorizing the sale in accordance with the above-quoted offer of purchase after finding:

> the receiver has the requisite authority and power to enter into the purchase agreement, which is the subject of this Motion, and the receiver possesses the requisite power to transfer the assets as provided by the executed purchase offer.[10]

A decree of dissolution and final decree was entered by the superior court on November 19, 1990, ordering, as here pertinent, that all claims against Cone-Heiden, Inc. ''have been disposed of pursuant to the receivership and applicable law.''

Press Products, Inc. assumed responsibility for leasing the Cone-Heiden, Inc. facility on May 18, 1989, and hired 18 of Cone-Heiden, Inc.'s former employees which was one-half of its then total employee complement at C-H Printing, Inc. The bill of sale was executed September 28, 1989, and conveyed all of the interest of Cone-Heiden, Inc. in its business assets at 3441 Thorndyke Avenue West, Seattle, Washington. The Grantee did not assume or promise to pay any of Cone-Heiden, Inc.'s obligations.

On May 15, 1990, the director, office of appeals of the Board, denied an appeal of the dismissal in Case 19–CA–20634 finding:

> The evidence reveals that when Press took over the business of Cone- Heiden, with the same group of employees, with little or no break in the operation it would be a ''classic'' successor except for the fact that it was not the owner at that time.[11] Whether Press was an agent as alleged by you or an independent contractor as described in the interim agreement it did not have final and complete control associated with ownership at the time of the May 22 and May 24 demands made by the Union and would not have the duty to bargain on those dates.
>
> Even assuming that this [July 31] letter is a bargaining demand, or that the May 22 letter could constitute a continuing demand, with the ownership of Press described as being effective no later then late August or early September, there would appear to be the question of an apparent successor receiving a demand from the representative of its predecessor's employees at a time

[8] Morse Press was a trade name used by Cone-Heiden, Inc.

[9] Sec. 23A.28.160 provides, as follows:

Bankruptcy rules shall apply to dissolution. [Effective until July 1, 1990.] In a proceeding for dissolution subject to the supervision of the court, all questions in respect to proof, allowance, payment and priority of claims shall be governed by the same rules as are applicable in bankruptcy proceedings under the national bankruptcy act as in force at the time of the dissolution proceedings. 11965 c 53 Sec. 99.

[10] Sec. 23A.28.180 provides as pertinent:

Procedure in liquidation of corporation by court. [Effective until July 1, 1990.] In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale.

[11] As noted in *NLRB v. Bildisco & Bildisco*, 465 U.S. at 528:

Obviously if the [debtor-in-possession] were a wholly ''new entity,'' it would be unnecessary for the Bankruptcy Code to allow it to reject executory contracts in the first place. For our purposes, it is sensible to view the debtor-in-possession as the same ''entity'' which existed before the filing of the bankruptcy petition, but empowered by virtue of the Bankruptcy Code to deal with its contracts and property in a manner it could not have employed absent the bankruptcy filing.

> when the successor has not attained a substantial and representative complement of employees. The issue must rely on the facts peculiar to each case. Thus, in *Hudson River Aggregates*, 246 NLRB 192 (1979), the Board noted a respondent could not rely on unit changes six months later to justify its initial refusal to bargain. But in *Myers Custom Products*, 278 NLRB 636, the Board held that when a new employer expects to increase its employee complement substantially within a short time, it is appropriate to delay determining the bargaining obligation for that short period. The instant case, where Press assumed ownership in late August or early September and by the pay period beginning September 25 had reached a complement of 53 employees, it was concluded that the short period as described in *Myers Products* would apply. Thus, the Employer refusal to bargain was not violative of the Act.

In *NLRB v. Bildisco & Bildisco*, supra, the United States Supreme Court determined that a collective-bargaining agreement is an executory contract which could be unilaterally altered by a debtor-in-possession and the debtor would not be committing an unfair labor practice by unilaterally altering the collective-bargaining agreement after filing a petition for formal rejection with the Bankruptcy Court but prior to approval or rejection of the petition. In response to this holding, Section 1113 was added to the Bankruptcy Code by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98–353, Stat. 333 (1984), which established procedural and substantive standards for the rejection of collective-bargaining agreements in reorganization cases.

Section 1113 provides a debtor-in-possession ''may assume or reject a collective-bargaining agreement only in accordance with the provisions of this section.'' The debtor-in-possession shall make application for such rejection only after proposing necessary modifications to the authorized representative of the employees, providing it with the relevant information needed to evaluate the proposal. If a proposal meets the statutory requirements but is rejected by the authorized representative ''without good cause,'' a hearing will be scheduled on the application for rejection of the collective-bargaining agreement.[12]

Section 103(a) of the Bankruptcy Code provides: ''Except as provided in Section 1161 of this title Chapters 1, 3 and 5 of this title apply in a case under Chapter 7, 11 or 13 of this title.'' Accordingly, I find the strictures of Section 1113 of the Bankruptcy Code also apply to liquidation petitions file under Chapter 7 of the Bankruptcy Code. See *Worldwide Detective Bureau*, 296 NLRB 148 (1989).

In a Chapter 7 liquidation proceeding under the Bankruptcy Code, the trustee has only 60 days from the order for relief to decide whether to accept or reject executory contracts. Section 365(d)(1). The Court in *Bildisco*, 465 U.S. at 529, found that the difference between the reorganization and liquidation procedures ''reflects the considered judgment of Congress that a debtor-in-possession seeking to reorganize should be granted more latitude in deciding whether to reject a contract than should a trustee in liquidation.'' The Court also found, supra at 524:

> . . . that because of the special nature of a collective-bargaining contract, and the consequent ''law of the shop'' which it creates, see *John Wiley & Sons*, supra; *Steelworkers v. Warrior & Gulf Navigation Co*., 363 U.S. 574, 578–579 (1960), a somewhat stricter standard should govern the decision of the Bankruptcy Court to allow rejection of a collective-bargaining agreement.

However, in the circumstances of this case, I find the state court exculpated Respondent Press Products, Inc. from assuming any obligations under the collective-bargaining agreements between Cone-Heiden, Inc. and the Union. The state court limited the applicability of the ''national bankruptcy act'' to ''all questions in respect to proof, allowance, payment and priority of claims.'' The assumption of executory contracts has not been shown to be encompassed in the term ''claims.'' There is no assertion the state court could not excuse Press Products, Inc. from assuming executory contracts, including the subject collective-bargaining agreements, and I find the state court clearly authorized Press Products, Inc. to reject the collective-bargaining agreements.

The actions by the Washington state court places the case in the posture of a liquidation proceeding prior to the enactment of Section 1113, as amended. Accordingly, the terms of *Bildisco* apply which permit the unilateral rejection of the collective-bargaining agreements prior to formal rejection by the Bankruptcy or other court with appropriate jurisdiction. Further, the state court specifically authorized Press Products to reject all executory contracts, which includes collective-bargaining agreements, determining this action was needed to protect the assets of Cone-Heiden, Inc. Consequently, I find Press Products, Inc. operating as C-H Printing, Inc. has not violated the Act by rejecting the collective-bargaining agreements and unilaterally changing unit members' terms and conditions of employment between May 19 and August 22, 1989.

I also reject the General Counsel's argument Press Products, Inc. operating as C-H Printing, Inc. was an agent for Cone-Heiden, Inc. In determining agency, the common law principals are applied. As found in *NLRB v. Longshoremen ILWU Local 10*, 283 F.2d 558, 563 (9th Cir. 1960):

> Senator Taft, the life-force behind the bill as enacted, repeatedly remarked on the floor of the Senate that common law rules of agency were to govern the question of who acted for whom for purposes of determining culpability under the Act.

In the instant case, the state terminated the operations of Cone-Heiden, Inc. on May 18. Cone-Heiden, Inc. then sought liquidation for it could not operate without violating Washington state law. The court appointed a receiver who then

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[12] Subdivisions (e) and (f) of Sec. 1113, as amended, recognized the respective burdens surviving in a bankruptcy situation as follows:

> (e) If during a period when the collective-bargaining agreement continues in effect, and if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by the collective-bargaining agreement.
>
> (f) No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective-bargaining agreement prior to compliance with the provisions of this section.

chose Press Products, Inc. to temporarily operate Cone-Heiden, Inc. solely to protect the assets of Cone-Heiden, Inc. The court and its agent, the receiver, placed Press Products, Inc. in the position of operating the assets of Cone-Heiden, Inc. There is no evidence Press Products, Inc. was dealing on behalf of Cone-Heiden, Inc. no less on the authority of Cone-Heiden, Inc. There is no evidence Press Products, Inc. assumed any liability for Cone-Heiden, Inc. The terms of Press Products, Inc.'s appointment as interim operator specifically made it an independent contractor. Press Products, Inc. was not shown to have any fiduciary relationship to Cone-Heiden, Inc. or to act on Cone-Heiden, Inc.'s behalf or subject to Cone-Heiden, Inc.'s control. Restatement 2d *Agency*, § 1. The General Counsel failed to adduce any evidence concerning the considerations, if any, the State of Washington Court included or excluded in reaching its determinations in this matter that would render these determinations liable to alteration by the Board.

The General Counsel did not prove Cone-Heiden, Inc. directed, demanded, requested, or in any other manner, caused Press Products, Inc. to conduct the business and/or labor relations in any manner. There is no evidence Press Products, Inc. could bind Cone-Heiden, Inc. in any regard. There is no evidence Press Products, Inc. had apparent authority to act for Cone-Heiden, Inc. or that Cone-Heiden, Inc. adopted, ratified or condoned actions by Press Products, Inc. It is not alleged Press Products, Inc. is the successor of Cone-Heiden, Inc., on the contrary, the General Counsel found Press Products, Inc. is not the successor of Cone-Heiden, Inc. It is not alleged Press Products, Inc. is the alter ego of Cone-Heiden, Inc. or they were a single-integrated enterprise. The General Counsel has presented no basis for finding Press Products, Inc. an ostensible agent no less an agent liable for the acts of a defunct principal. Restatement 2d *Agency*, § 320.

Assuming arguendo, Section 1113 of the Bankruptcy Code applied to the state court liquidation proceeding, I would find Press Products, Inc. operating as C-H Printing, Inc. violated Section 8(a)(5) and (1) of the Act by unilaterally altering unit employees terms and conditions of employment. C-H Printing, Inc. did not propose any modifications to the collective-bargaining agreements to the Union nor provide the Union with relevant information to evaluate any such proposal. Further, there was no hearing on any proposed rejection of the collective-bargaining agreements. I would find Press Products, Inc. operating as C-H Printing, Inc., is similar to a debtor-in-possession, empowered by the trustee to operate with similar rights and powers. *Iron Workers Local 455 v. Kevin Steel Products*, 519 F.2d 698 (2d Cir. 1975); *Cagle's Inc*., 218 NLRB 603, 604 (1975).

I would further find that Press Products, Inc., operating as C-H Printing, Inc. since on or about May 18, 1989, as the interim operator for Cone-Heiden, Inc., was obligated to abide by the collective-bargaining agreements until after they proposed necessary modifications to the Union and provided it with the relevant information needed to evaluate the proposals and after C-H Printing, Inc. made application for such rejection. If a proposal meets the statutory requirements but is rejected by the authorized representative ''without good cause,'' a hearing will be scheduled on the application for rejection of the collective-bargaining agreement and they were rejected by the court. There was no such proposed alterations to the collective-bargaining agreements; C-H Printing, Inc. did not make any operating or other information available to the Union; and, there was no specific request to the court for affirmative rejection of the collective-bargaining agreements under the terms and conditions required by Section 1113 of the Bankruptcy Code before their rejection. I would find C-H Printing, Inc. had an affirmative duty to make proposals to the Union before unilaterally changing any terms and conditions of its represented employees' employment. This duty remained until Cone-Heiden, Inc. was sold to C-H Printing, Inc. on August 22, 1989.

Also, I would hold Press Products, Inc. was the alter ego to Cone-Heiden, Inc. under the Bankruptcy Code and would be liable for any unilateral changes to the unit member' terms and conditions of employment. *Plumbers Local 669 v. James M. Goodman*, 868 F.2d 116 (2d Cir. 1989); *Karsh's Bakery*, 273 NLRB 1131; *Nathan Yorke, Trustee*, 259 NLRB 819; *Jersey Juniors*, 230 NLRB 329; *Cagle's, Inc*., supra; and *Marion Simcox, Trustee*, 178 NLRB 516 (1969).

In sum, I conclude all allegations against Respondent Press Products, Inc., operating as C-H Printing, Inc., should be dismissed.

CONCLUSIONS OF LAW

1. Respondents, Cone-Heiden, Inc., and Press Products, Inc., operating as C-H Printing, Inc., are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Graphic Communications International Union, Local 767-M, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material the Union has been the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act for the following appropriate units:

(a) All mailing department machine operators, machine operator apprentices, and general workers employed by Cone-Heiden, Inc. at its Seattle facility, excluding all other employees, supervisors, and guards as defined in the Act. The effective dates for the collective-bargaining agreement for this unit were May 1, 1988, to April 30, 1990.

(b) All preparatory department employees, duplicator operators, and press employees employed by Cone-Heiden, Inc. at its Seattle facility, excluding all other employees, supervisors, and guards as defined in the Act. The collective-bargaining agreement covering these employees was effective from May 1, 1987, to April 30, 1990.

(c) All bookbinders, general bindery workers, and warehouse employees employed by Cone-Heiden, Inc. at its Seattle facility, excluding all other employees, supervisors, and guards as defined in the Act. The collective-bargaining agreement covering these employees was effective from May 1, 1987, to April 30, 1990.

4. At all times material, the Union has been the exclusive collective-bargaining representative of all of the employees in the units found appropriate in Conclusion of Law 3 for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By unilaterally changing established terms and conditions of employment of employees in the bargaining units, by failing to contribute to various fringe benefit funds paying contractual wages and other benefits, and processing grievances, without a valid impasse having been reached in its contract negotiations with the Union, and without affording

the Union an opportunity to negotiate and bargain as the exclusive representative of the above described unit members, Cone-Heiden Corporation, Inc. violated Section 8(a)(5) and (1) of the Act.

6. This unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent Cone-Heiden, Inc. has engaged in unfair labor practices proscribed by Section 8(a)(5) and (1) of the Act, I recommend that it cease and desist therefrom, and that it take certain affirmative action designed to remedy the unfair labor practices and to effectuate the policies of the Act.

Since Cone-Heiden, Inc. has been dissolved and its assets liquidated in accordance with the State of Washington's liquidation proceedings, in which General Counsel participated, I find a make-whole remedy is not appropriate and Cone-Heiden, Inc. will not be ordered to pay the various funds and former employees the amounts required by the collective-bargaining agreements.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, Cone-Heiden, Inc., Seattle, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally implementing terms and conditions of employment at variance with contractual provisions and existing practices with respect to processing grievances, contributions to various fringe benefit funds, and payment of wages and other benefits.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, or in any like or related manner refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Preserve and, on request, make available to the Board or its agent, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or appropriate to analyze the amount of money due under the terms of this Order.

(b) Post at all facilities and places of business, in Seattle, Washington, copies of the attached notice marked ''Appendix.''[14] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the consolidated complaint be, and it is hereby dismissed insofar as it alleges violations of the Act not specifically found.

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

Accordingly, we give you these assurances:

WE WILL NOT unilaterally implement terms and conditions of employment at variance with established practice or with those contained in our collective-bargaining agreements with Graphic Communications International Union, Local 767-M, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce any of you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with Graphic Communications International Union, Local 767-M, AFL–CIO, as exclusive representative of all the employees in the above-described unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

CONE-HEIDEN CORPORATION, INC. AND ITS AGENT PRESS PRODUCTS, INC. D/B/A C-H PRINTING